



Compliance

with the



Government Records Access and Management Act

Rosemary Cundiff
October 24, 2019

DAS | Utah Division of Archives and Records Service


1

Utah Code Title 63G Chapter 2

DAS

2



GRAMA


- Part 1: General Provisions
- Part 2: Access to Records
- Part 3: Classification
- Part 4: Appeals
- Part 5: State Records Committee
- Part 6: Collection of Information and Accuracy of Records
- Part 7: Applicability to Political Subdivisions, the Judiciary, and the Legislature
- Part 8: Remedies
- Part 9: Public Associations

DAS

3

Legislative Intent

- Legislative Intent: 63G-2-102 (1) and (2)



DAS

4



Legislative Intent



- Legislative Intent: 63G-2-102
- Promote easy and reasonable access to public records
- Specify when public interest in restriction outweighs interest in access
- Prevent abuse of confidentiality
- Provide guidelines for both disclosure and restriction
- Favor public access on balance
- Establish fair and reasonable records management practices

DAS

5

Definitions

- 63G-2-103(11)(a-b)
- Governmental entity means:
 - Executive offices of the state
 - Legislature
 - Courts
 - Higher and public education
 - Political subdivisions
- Also means every office, department, commission ... that is established or funded by government to carry out public business.

DAS

6

Definitions

63G-2-103(22)(a)

Record means documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity; and

(ii) where all of the information in the original is reproducible.



DAS

7

Definitions

63-2-103(22)(b)

• Record does not mean:

- a personal note or communication
- a temporary draft or similar material
- proprietary software
- commercial mail or publications
- book or material contained in library
- employee mobile phone number
- Children's Justice Center interview
- child pornography



DAS

8

Definitions

• 63G-2-103(3) and (7)

- Classification means determining whether a record or information is public, private, controlled, protected or otherwise exempt from disclosure.
- Designation means predetermining a classification based on familiarity with the records or upon a representative sample.

DAS

9

Definitions

• 63G-2-103(6), (19), and (20)

- Controlled records contain data on individuals that is controlled as provided in section 63G-2-304
- Private records contain data on individuals that is private as provided in section 63G-2-302
- Protected record means a record that is classified as protected as provided in section 63G-2-305

DAS

10

Definitions

• 63G-2-103(21).

• Public record means a record that is not private, controlled, protected or exempt from disclosure based on some other statute.



DAS

11

Definitions

• 63G-2-103(25)

- Records officer means the individual appointed by a chief administrative officer
 - to work with the state archives
 - on records'
 - care
 - maintenance
 - scheduling
 - designation and classification
 - disposal
 - preservation



DAS

12



Right to inspect records and receive copies

63G-2-201(1)(2)

Every person has the right:

- to inspect a public record free of charge, and
- to take a copy of a public record during normal working hours
 - Subject to Sections -203 and -204

But not if record:

- was already provided
- is available online
- is only accessible in a computer owned by government that also contains restricted information not easily segregated.

DPS

13

Right to inspect records and receive copies

- 63G-2-201(3)(5)
 - Private, controlled, and protected records are not public
 - Records restricted by other statutes are not public
- A governmental entity may not disclose a private, controlled, or protected record except as outlined in GRAMA or other statute.




DPS

14

Right to inspect records and receive copies

- 63G-2-201(8)(a) and (b)
 - In response to a request, a governmental entity is not required to:
 - compile, format, manipulate, package, summarize, or tailor information
 - provide a record in a particular format, medium, or program not currently maintained...
 - But, a governmental entity may do these things and it may also determine whether this will unreasonably interfere with normal duties and may require payment of appropriate fees.

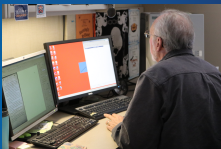


DPS

15

Right to inspect records and receive copies

- 63G-2-201(8)(a) and (b)
 - In response to a request, a governmental entity is not required to:
 - create a record
 - fulfill request if unreasonably duplicates prior request from same person
 - fill a person's request if the records are available (online) and the governmental entity specifies where they can be found.



DPS

16

Right to inspect records and receive copies

- 63G-2-201(11) and (12)
 - Physical form cannot hinder access.
 - Must provide electronic copy if:
 - requester states preference
 - record is maintained in electronic format
 - restricted records are segregated



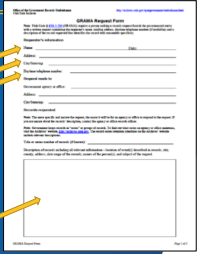
DPS

17

Requests

63G-2-204(i)

- A person making a request shall provide in writing:
 - name
 - address
 - daytime phone number,
 - email address if person is willing to accept email communications
 - description of the requested record that identifies it with reasonable specificity.



DPS

18

Requests

- 63G-2-204(1)
- A person making a request shall submit the request to the governmental entity that prepares, owns, or retains the record.
- A single records request may not be submitted to multiple entities.

DAS

19

Requests

- 63G-2-204(3)(b).
- After receiving a request governmental entity shall respond as soon as reasonably possible, but not later than ten days.
 - approve and provide records
 - deny access to records in whole or part
 - notify requester governmental entity does not have record
 - notify requester of extraordinary circumstance.
 - cannot immediately approve or deny the request

DAS

20

Denials

- 63G-2-205(1)(2)
- A notice of denial should include:
 - description of record(s) denied
 - legal citation that supports denial
 - statement of right to appeal
 - contact information for CAO.

DAS

21

Denials

- 63G-2-205(3)
- May not destroy or give up custody of denied records until appeals process is complete or time for appeal has expired.



DAS

22

Requests

- 63G-2-204(2)
- In response to a request a governmental entity may not provide a record that it received as a shared record. Instead it shall:
 - deny the records request
 - inform the requester of the governmental entity from which the shared record was received.

DAS

23

Requests


- 63G-2-204(8)
- Failure to respond or provide requested records or issue a denial within specified time is equivalent to a denial.

(Requester may appeal to chief administrative officer)




DAS

24




Fees

- 63G-2-203(1) and (2) Fees
- Governmental entity may charge reasonable fee to cover:
 - staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring to meet the person's request
 - staff time for search and retrieval.




25




Fees

- 63G-2-203(1) and (2) Fees
- Fees for compiling a record in a form other than that maintained...
 - can charge actual cost for computer output
 - cannot charge for the first 15 min. of staff time
 - hourly charge is based on the salary of lowest paid capable employee.




26



Fees



- 63G-2-203(3)(b)(c)
- State government fees approved by the Legislature
- Political subdivisions establish fees through ordinances or written formal policy adopted by the governing body.



27

Sharing Records

- 63G-2-206(2)
- A governmental entity MAY provide a record that is private, controlled, or protected to another governmental entity-managed corporation, a political subdivision, the federal government, or another state if the requesting entity provides written assurance that:
 - the record is necessary to perform duties and functions
 - the record will be used for a purpose similar to the purpose for which it was obtained
 - the use of the record produces a public benefit.






28

Subpoenas

63G-2-207(1).

- Subpoenas and other methods of discovery are not GRAMA requests.


29

Public records

63G-2-301(2)(b)

- Records are public - but may contain confidential information
 - the following information about employees:
 - name
 - gender
 - gross compensation
 - job title and description
 - business contact information
 - number of hours worked
 - dates of employment
 - relevant experience and previous employment
 - other job qualifications.

excluding undercover law enforcement and investigative personnel



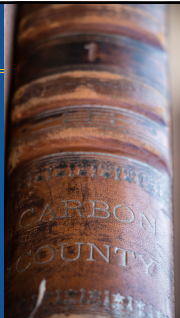
30

Public records

63G-2-301(2)(e)(f)(g)

Records are public – but may contain confidential information

- minutes, recording, transcript of open public meeting
- judicial records unless the court orders the restriction
- records maintained by county recorders, clerks, surveyors documenting property rights and tax status



DPS

31

Private records

63G-2-302(1)(a)(b)

• The following records are private:

- records concerning eligibility for unemployment, social services or welfare benefits
- medical data such as diagnosis, treatment, and medical condition or evaluation.



DPS

32

Private records

63G-2-302(1)(g)

• The following records are private:

- employment records including
 - home address and phone number
 - Social Security number
 - insurance coverage
 - marital status
 - payroll deductions



DPS

33

Controlled records

• 63G-2-304

Controlled records contain

- Medical
- Psychiatric or
- Psychological data



and government believes that:

- release would be detrimental to mental health or safety
- release violates professional practice

DPS

34

Protected records

• 63G-2-305(1)(2)(6)

• The following records are protected if properly classified:

- trade secrets if the person submitting the trade secret provided confidentiality agreement
- commercial or non-individual financial information
- records that would impair procurement proceedings, except not after a contract is awarded and signed



DPS

35

Protected records

• 63G-2-305(17)(18)(22)

• The following records are protected if properly classified:

- subject to attorney client privilege
- prepared in anticipation of litigation or quasi-judicial proceeding
- drafts



DPS

36

Duty to Evaluate Records and make Designations and Classification

63G-2-307

- Governmental entities responsible to classify their own records.
- May make designations at any time.
- Classification not required until a record is requested.
- May re-designate or reclassify records at any time



DAS

37

Segregation of Records

• 63G-2-308

- When a records contain both public and restricted information, government:

- SHALL allow access to public information and deny access to remaining information
- remaining information must be intelligible
- MAY deny access to remaining information and issue a notice of denial

DAS

38

Appeals

63G-2-401(1)(5)

- (1)(a) A requester or interested party may appeal access denial to the governmental entity's chief administrative officer within 30 days.
- (5) The chief administrative officer shall make a decision on the appeal within 10 business days after receipt of appeal. *

*additional provisions apply if confidentiality claims are involved

DAS

39

Appeals

63G-2-401(6).

A chief administrative officer may weigh various interests and public policies pertinent to the classification, and may order the release of records that are properly classified as protected, or may order the release of records that are private if properly classified.

DAS

40

Appeals

63G-2-401(7)

The governmental entity shall send written notice of the chief administrative officer's decision to all participants. If denial is affirmed, notice to include:

- Statement that requester has the right to appeal
 - To State Records Committee or District Court
 - To a local appeals board if applicable

- Time limits for appeal (30 days)

- Name and business address of
 - State Records Committee executive secretary
 - Designated individual for a local appeals board.

DAS

41

State Records Committee

63G-2-403 - 501 - 502

- State Records Committee

- 7 Members
 - director of State Archives
 - two citizen members
 - representative of news media
 - private sector records manager
 - Utah League of Cities and Towns nominee
 - individual with electronic records and database experience



DAS

42

Compliance Checklist

Utah Code 63a-12-103(2)

- A chief administrative officer must appoint a records officer or records officers who will be trained to work with the State Archives in the maintenance, classification, and access of records.



43

Compliance Checklist

Utah Code 63a-12-103(3)

- A chief administrative officer must ensure that the records officer or employees who process GRAMA requests receive training on the requirements of GRAMA.



44

Compliance Checklist

Utah Code 63g-2-108

- Records officers must be certified annually by completing online training through the Utah State Archives.



45

Compliance Checklist

Utah Code 63g-2-307 – Utah Code 63a-12-103(18)(9)

- Governmental entities should evaluate the records they maintain and report designations to the State Archives.
- Classification is not required until a request is received.



46

Compliance Checklist

Utah Code 63g-2-201(1)

- Governmental entities must make public records available for inspection during normal business hours.
- Exceptions include records that:
 - are available on line
 - have already been provided to the requester
 - are on a computer and cannot readily be segregated from restricted information.



47

Compliance Checklist

Utah Code 63g-2-401(5)(6)(7)(9)

- The chief administrative officer shall make a decision on an appeal of access denial within the specified time.
- The chief administrative officer may weight various interests and order the disclosure of certain restricted records if interest in disclosure outweighs interest in restriction.
- The governmental entity shall send written notice of the chief administrative officers' decision within the specified time.
- The chief administrative officer may delegate these responsibilities.



48

Compliance Checklist

Utah Code 63g-2-203(3)(c) – 63g-2-701(1)(2)

- Political subdivisions should establish fees for records requests by ordinance or formal written policy.
- Political subdivisions may adopt policies or ordinances relating to the information practices set forth in GRAMA.
- Such policies or ordinances must be filed with the State Archives.



49

Government records ombudsman

Utah Code 63a-12-111(2)

- The ombudsman must be familiar with GRAMA.
- The ombudsman is a resource for people who making and responding records requests.
- Upon request the ombudsman may mediate disputes over records.



50

Information

- State Archives: <http://www.archives.state.ut.us/>
- Records Management Training: <http://www.archives.state.ut.us/recordsmanagement/training.html>
- Utah Public Notice Website: <http://www.utah.gov/ppm/index.html>
- Open Records Portal: <http://openrecords.utah.gov/>
- State Records Committee: <http://www.archives.state.ut.us/src/index.html>
- Government Records Ombudsman: <http://www.archives.state.ut.us/recordsmanagement/ombudsman.html>



51